

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS  
ATTORNEY GENERAL

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February 3, 2020

**VIA ELECTRONIC MAIL ONLY**

Santa Fe County Sheriff's Office  
Rachel A. Brown, Esq.  
P. O. Box 276  
Santa Fe, NM 87504-0276  
Email: [rabrown@santafecountynm.gov](mailto:rabrown@santafecountynm.gov)

**Re: Inspection of Public Records Act Complaint – Rebekah S. Wright, Esq.**

Dear Ms. Brown:

Thank you for your response to our inquiry into the complaint filed with the Office of the Attorney General by Ms. Rebekah S. Wright, Esq., alleging that the Santa Fe County Sheriff's Office (hereinafter the "Sheriff's Office") violated the Inspection of Public Records Act ("IPRA"), NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2019). As you know, Ms. Wright alleged that the Sheriff's Office failed to respond to her records request dated May 30, 2019. We understand from your response that, upon discovering Ms. Wright's request following her complaint to our Office, the Sheriff's Office immediately provided her all of the records she requested. We are satisfied with the steps taken by the Sheriff's Office both to address Ms. Wright's request specifically and to improve its public records process more generally.

Background

As set forth in IPRA, the public policy of the State of New Mexico is to afford its citizens "the greatest possible information" about governmental affairs. NMSA 1978, § 14-2-5. *See also San Juan Agr. Water Users Ass'n v. KNME-TV*, 2011-NMSC-011, ¶ 16 (noting that, "IPRA is intended to ensure that the public servants of New Mexico remain accountable to the people they serve."). IPRA states specifically that providing this information to the public "is an *essential* function of a representative government and an *integral* part of the routine duties of public officers and employees." Section 14-2-5 (emphasis added). To that end, the statute guarantees the public the right to inspect and copy all "public records" with only limited and specifically enumerated exceptions. Section 14-2-1(A). All of IPRA's provisions must be interpreted in light of this public

policy and the “presumption in favor of the right to inspect.” Attorney General’s Inspection of Public Records Act Compliance Guide, p. 7 (8<sup>th</sup> ed. 2015) (“IPRA Guide”).

Ms. Wright’s complaint to our Office alleges that the Sheriff’s Office violated IPRA in connection with her records request dated May 30, 2019, which sought a variety of records related to a particular traffic accident. Ms. Wright submitted this request to the Sheriff’s Office through email and thereafter received no response whatsoever until she filed her complaint with our Office on September 17, 2019. It appears that, on the same day of September 17, 2019, Ms. Wright called the Sheriff’s Office and left a voicemail inquiring as to the status of her request.<sup>1</sup> In response to our inquiry, the Sheriff’s Office explained that it did not initially respond to Ms. Wright because it was unaware of her request. Instead, Ms. Wright’s email had automatically been filtered into the junk email folder of the Sheriff’s Office’s records custodian.

Regardless, upon discovering Ms. Wright’s request, the Sheriff’s Office responded promptly. On or about September 19, 2019, the Sheriff’s Office emailed Ms. Wright and provided her one of the records she had requested, redacting only protected personal identifier information. *See* § 14-2-1.1 (providing that, “Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record.”). However, a little over one week later, on September 28, 2019, Ms. Wright contacted the Sheriff’s Office again, stating that she did not believe that she had been provided all responsive records due to missing “[p]hotos, lapel camera, and other evidence (a diagram).” The Sheriff’s Office responded to Ms. Wright’s email by conducting another search for records and ultimately providing her additional records (a “dash cam video” and a diagram) on October 1, 2019. At that time, the Sheriff’s Office informed her that it had no additional responsive records, and it made the same statement in response to our Office’s inquiry.

Although the Sheriff’s Office had made a number of redactions to the record it provided to Ms. Wright on September 19, 2019, it did not provide a written explanation of those redactions until December 6, 2019. That email identified the legal basis for the redactions but did not identify which individual employees at the Sheriff’s Office were responsible for them. In response to our inquiry, the Sheriff’s Office stated that its delay in sending its written explanation to Ms. Wright was an inadvertent violation of its own public records procedures and that “[i]t is the standard practice of the Sheriff’s Office to provide the requestor with a written explanation for the redaction ... of any records.”

#### Delays in Responding to Ms. Wright’s Request

The sole allegation in Ms. Wright’s complaint, that she received no records in response to her request, is moot in light of the more recent communications and responses sent by the Sheriff’s Office. The Sheriff’s Office maintains that it has (belatedly) responded fully to Ms. Wright’s request, and that it has not withheld any responsive records. As a result, in the absence of any evidence showing that any additional responsive records exist, we must accept the statement made by the Sheriff’s Office that it has fully responded to the request. *See Saunders v. Dep’t of Corr.*,

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<sup>1</sup> Our Office also informally reached out to the Sheriff’s Office the week following her complaint to both inquire and notify it of Ms. Wright’s records request, on or about September 23, 2019.

172 A.3d 110, 113 (Pa. Commw. Ct. 2017) (holding that the public body's statement that no records exist was "sufficient to establish the nonexistence of the record"), *citing Moore v. Office of Open Records*, 992 A.2d 907 (Pa. Commw. Ct. 2010).

Although the Sheriff's Office's significantly delayed response arguably represented an IPRA violation – approximately three and a half months (112 days) elapsed between the date of Ms. Wright's request and the first response from the Sheriff's Office – we are satisfied that it has implemented the necessary policies and procedures to prevent a recurrence of this type of delay. The Sheriff's Office explains that its failure to respond to Ms. Wright was entirely attributable to the fact that her request was automatically directed into its records custodian's junk email folder,<sup>2</sup> and that it has now "formally directed the records custodian to check [the] junk mail folder for records requests daily, and the Office has committed to issuing an official policy addressing that issue." This directive appears to be an optimal policy and one that should effectively ensure that future records requests are not inadvertently ignored. As a result, we conclude that, while the Sheriff's Office's delays in this case were unfortunate and unacceptable, it has taken sufficient action to fix its related policies and procedures.

#### Explanation of Redactions

The Sheriff's Office acknowledges that it made a number of redactions to at least one of the records it provided to Ms. Wright. All of these redactions were apparently made on the basis of IPRA's exception for protected personal identifier information. *See* § 14-2-1.1; *see also* § 14-2-6(E) (defining "protected personal identifier information" as "all but the last four digits of a ... taxpayer identification number; ... financial account number; or ... driver's license number; ... all but the year of a person's date of birth; and ... a social security number"). While we do not question the substantive basis for these redactions, we would take this opportunity to educate the Sheriff's Office as to the technical requirements associated with providing a requestor a written explanation of withheld or redacted records.

Whenever a public body withholds or redacts a record, IPRA requires it to provide the requestor with a "written explanation of the denial." Section 14-2-11(B). This written explanation, often referred to informally as a "denial letter," must contain three key pieces of information: the specific exception in law justifying the denial, a description of the records sought, and "the names and titles or positions of each person responsible for the denial." Section 14-2-11(B); *see also* IPRA Guide, p. 40 (stating that a denial letter must "describe the records sought to be inspected, set forth the names and titles or positions of each person responsible for the denial, and explain the reason for the denial"). As our Court of Appeals has emphasized, denial letters convey vital information to the requestor and are therefore critical to the operation of IPRA. *See American Civil Liberties Union of New Mexico v. Duran*, 2016-NMCA-063, ¶ 38 (stating that, "Denials are valuable information-gathering tools. With respect to any given record request, the absence of either (1) production of responsive records or (2) a conforming denial based upon a valid IPRA exception sends a strong message to the requester that no responsive public record exists.").

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<sup>2</sup> Because the Sheriff's Office ultimately provided Ms. Wright the responsive records and has amended its internal procedures to address problems with its junk mail folder, we do not need to resolve the question of whether a records request that was automatically redirected into a junk email folder was still "delivered to the office of the custodian" so as to commence IPRA's deadlines. Section 14-2-8(D).

In this case, the "written explanation of the denial" that the Sheriff's Office provided to Ms. Wright was insufficient because it did not identify the individuals responsible for its redactions.<sup>3</sup> Section 14-2-11(B). Although it was signed by the records custodian, this alone is not sufficient unless the denial letter otherwise identifies the records custodian as the "person responsible for the denial." Section 14-2-11(B)(2). As the letter from the Sheriff's Office stated only that protected personal identifier information "was redacted" without providing additional information as to which particular employees were responsible for this decision, its "written explanation of the denial" was technically insufficient under IPRA. Section 14-2-11(B). We bring this issue to the attention of the Sheriff's Office so that it may both consider sending Ms. Wright a revised written explanation and so that it may craft its IPRA policies and procedures to more closely adhere to its statutory obligations.

### Conclusion

Although we are concerned about the delays experienced by Ms. Wright in connection with her records request, we are encouraged by the steps taken by the Sheriff's Office to ensure that it fully complies with IPRA in the future. We think that requiring its records custodians to check the junk email folder is a smart practice and one that reduces the chances of future records requests being overlooked or inadvertently ignored. In addition, we suggest that the Sheriff's Office reevaluate its current policies as to denial letters so as to ensure that it is providing requestors with adequate information whenever it decides to redact or withhold a record. The Sheriff's Office would also do well to bring closure to Ms. Wright's request by sending a revised "written explanation" of the redactions it made to the records it ultimately provided to her.

For your reference, a copy of the IPRA Guide is available on the website of the Office of the Attorney General at [www.nmag.gov](http://www.nmag.gov). If you have any questions regarding this determination or IPRA in general, please let me know.

Sincerely,



John Kreienkamp  
Assistant Attorney General

cc: Rebekah S. Wright, Esq.

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<sup>3</sup> As it acknowledged in response to our inquiry, the Sheriff's Office also was untimely in providing an explanation of its redactions to Ms. Wright, only sending her a denial letter on December 6, 2019. Although it is critical that the Sheriff's Office send such communications in a more timely manner in the future, we are satisfied that it does have policies in place requiring its records custodian to provide denial letters within the deadlines set forth by IPRA.

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## Electronic Complaint Submission

### Submission Detail

<b>ECS Reference Number</b>	NMOAG-ECS-20190917-a5fb
<b>Final Submit Date</b>	9/17/2019 3:03:44 PM

**Disclosure of your complaint:** This complaint is a public record, thus available under provisions of the NM Inspection of Public Records Act.

**Disclosure to other entities:** This complaint, its content, and other information may be disclosed to other law enforcement and regulatory agencies.

**I understand this complaint and any submitted documents are public record and may be shared with other law enforcement and regulatory agencies.**

**DECLARATION:** By submitting this form, I attest that the information in this complaint is true and accurate to the best of my knowledge. I further understand that by submitting this form I may be called to testify as a witness in this matter.

**I understand declaration statement.**

*The New Mexico Office of the Attorney General cannot give legal advice regarding this complaint and will not act as your personal attorney. If you have questions regarding your rights please contact a private attorney.*

*Submission of this complaint is not confirmation that an investigation will be initiated.*

## Complaint Detail

**Complaint Type** Inspection of Public Records (IPRA) Complaint

**Retained Attorney**

## Parties

### Complainant

**Ms Rebekah Staggs Wright**

Person

#### Address

[REDACTED]

[REDACTED]

### Complaint against

**Santa Fe County Sheriff's Office - Records Custodian**

Public Body (Government Entity)

#### Address

35 Camino Justicia  
Santa Fe, New Mexico 87508

#### Contact information

[shfrecordsreq@santafecountynm.gov](mailto:shfrecordsreq@santafecountynm.gov)

(505) 986-2455

<https://www.santafecountynm.gov/sheriff>

## Complaint Specifics

<b>Format of IPRA request:</b>	Written
<b>Date IPRA request was submitted to the public body:</b>	May 30, 2019
<b>Date of all responses received from the public body:</b>	No response received
<b>Records</b>	No records were provided.

## Transaction

## Documents



IPRA Compl. 09.17.19 rwright.pdf

IPRA Complaint

**Comments**

\*\*\* END OF COMPLAINT \*\*\*

**INSPECTION OF PUBLIC RECORDS ACT ("IPRA") COMPLAINT FORM**

New Mexico Office of the Attorney General

Open Government Division

**YOUR CONTACT INFORMATION:**

First Name: Rebekah Last Name: Wright

Address: 4801 Lang Ave. NE Suite 110

City: Albuquerque State: NM Zip Code: 87109

Phone Number: (505) 563-0801

Email: Rebekah@wrightlawnm.com

**IPRA REQUEST TO THE PUBLIC BODY:**

Name of the Public Body that is the subject of this complaint (including city/town, county or region, if applicable): Santa Fe County Sheriff's Office

Format of IPRA Request:  Written  Oral

Date IPRA Request was Submitted to the Public Body: May 30, 2019

(see attached)

Date of all Responses Received from the Public Body: No response received

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**ALLEGED VIOLATIONS OF IPRA BY THE PUBLIC BODY:** Please select from the following list the violations you allege the public body committed. Check all that apply.

**RECORDS**

No records were provided.

The agency provided some but not all of the records responsive to the request.

Records were provided, but they were not responsive to the request.

The public body does not have custody or responsibility for the records, and the records custodian did not forward the request to the proper custodian.

The request was for records in electronic format and although the records are available in electronic format, the copies of the public records were not provided in an electronic format.





**Rebekah Wright** <[rebekah@wrightlawnm.com](mailto:rebekah@wrightlawnm.com)>

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## IPRA request

**Rebekah Wright** <[rebekah@wrightlawnm.com](mailto:rebekah@wrightlawnm.com)>

To: [shfrecordsreq@santafecountynm.gov](mailto:shfrecordsreq@santafecountynm.gov)

Thu, May 30, 2019 at 11:47 AM

Good morning,

I request, pursuant to the inspection of public records act, copies of all videos (including lapel and dash video), photographs, investigations, reports, diagrams, 911 calls, witness statements, citations, criminal charges, and any other public records related to the following incident:

Case number: 0218015926

Crash report: 23474147

Date of incident: 09/19/2018

Thank you.

Requestor:

Rebekah Wright

Law Office of Rebekah S. Wright, LLC

[Rebekah@wrightlawnm.com](mailto:Rebekah@wrightlawnm.com)

Ph. (505) 563-0801

Fax (505) 393-1004

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